

E-Filed 6/16/2008

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LINDSEY ABRAMS, individually and on behalf
of a class of similarly situated individual,

Plaintiff,

v.

FACEBOOK, INC. A Delaware corporation,

Defendant.

Case Number C 07-5378

ORDER¹ GRANTING DEFENDANT'S
EX PARTE APPLICATION TO
CONTINUE HEARING

[re: docket no. 10]

On October 22, 2007, Plaintiff Lindsay Abrams ("Abrams") filed a putative class action against Defendant Facebook, Inc. ("Facebook"). On January 23, 2008, the parties filed a Stipulated Entry of Judgment of Dismissal with Prejudice and General Release ("Stipulated Settlement"). The Stipulated Settlement provides the following with respect to attorneys' fees:

The parties agree that plaintiff's counsel is entitled to a reasonable award of attorneys' fees and expenses in an amount to be determined by the Court. Facebook agrees that any such determination by the Court will be based not solely on the relief obtained for the plaintiff, but also on the benefits conveyed more generally through this settlement. Facebook further agrees that plaintiff shall be entitled to reasonable, limited discovery on this issue, including information relating to (a) the number of text messages Facebook sends out on a daily basis,

¹ This disposition is not designated for publication and may not be cited.

(b) the number of text messages sent to previously recycled numbers, and (c) the steps Facebook did or did not previously take to ensure that text messages were not sent to people who did not want them. The parties have agreed that plaintiff's counsel shall submit to the Court in the Action an application in support of an award to plaintiff's counsel via written submissions and briefs and orally at the hearing on such application. The parties state further that it is their collective intention to expedite the process of conducting the foregoing evidentiary hearing and enabling the necessary judicial determinations. Facebook agrees not to appeal the District Court's final Order with respect to such application and to pay any amounts awarded thereby within thirty (30) calendar days of the entry of the final order thereon.


Stipulated Settlement ¶ 6.

Facebook now seeks to continue the evidentiary hearing scheduled for July 11, 2008, to September 19, 2008, so that it may conduct limited discovery into the subject matters raised by Abrams's fee application. Specifically, Facebook argues that without the ability to review counsel's billing records and depose the experts whose opinions have been proffered, it cannot mount an effective challenge to Abrams's fee request of \$5 million. Abrams contends that Facebook is not entitled to such discovery because the Stipulated Settlement provides only for discovery by Abrams. However, the discovery referenced in the Stipulated Settlement concerns the merits of Abrams's claim. Nothing in the Stipulated Settlement precludes Facebook from conducting discovery with respect to Abrams's application for attorneys' fees; indeed the Stipulated Settlement contemplates that Facebook may challenge the application. Accordingly, the Court will continue the hearing and grant Facebook the limited discovery it seeks.

IV. ORDER

Good cause therefor appearing, IT IS SO ORDERED.

DATED: June 16, 2008.


JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 Alan Himmelfarb consumerlaw1@earthlink.net

3 Ethan Mark Preston ep@eplaw.us

4 Myles P. Guire myles@blimlaw.com

5 Michael Graham Rhodes rhodesmg@cooley.com